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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/520,947	03/08/2000	Norman Paul Formo	FPMI114707	1127

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/22/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/520,947

Applicant(s)

FORMO, NORMAN PAUL

Examiner

Robert Madsen

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See the attached office action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 25-35.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

The amendment filed September 19, 2002 under 37 CFR 1.116 in reply to the final rejection will be entered upon the filing of an appeal, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

**Allowed claim(s): None**

**Rejected claim(s): 25-35**

**Claim(s) objected to: None**

***Response to Arguments***

Morris differs from the product and method claims in only two features:

- Morris teaches an inner *wrap*, versus a *bag*.
- Morris fails to teach shrink wrapping an inner bag.

Otherwise, Morris teaches the general method steps and the general package structure as applicant (see Paper No. 8): a bread-containing inner package (i.e. a wrap) heat-sealed at both ends with perforations at one end to enable access by the consumer.

Whereas Morris teaches a *sealed*, bread containing *wrap* having an end with perforations to enable access, McEachen teaches a *sealed*, bread-containing *bag* having an end with perforations to enable access. McEachen teaches the bread is inserted through an open end and the closed end has perforations. Like Morris, McEachen teaches *both* ends are sealed (i.e. the open end used for filling may be sealed by "choking, heat-sealing, etc."). Thus, since each teaches a package used for

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the same intended purpose (i.e. a sealed bread package with perforations on one end to enable access), substituting an inner bag for an inner wrap would have been obvious.

Applicant argues that substituting the wrap of Morris with the bag of McEachen would require the *outside* bag of Morris to be openable at both ends since McEachen teaches the bag is *openable* at both ends and the *accepted* procedure of packaging a bag within a bag is placing open ends of inner and outer bags adjacent to one another. This argument is moot based on two facts.

The first fact is Morris, the primary reference, teaches *filling* and *sealing* a bread package with a perforated end, and then *inserting* the *sealed* bread package into an outer bag such that the perforated end is closest to the re-openable end of the outer bag. Therefore, the *accepted* procedure of placing *open* ends of an inner bag and an outer bag adjacent to one another would be not even be relevant to Morris since Morris teaches a product and method that requires the inner package to be *sealed prior to inserting* it into the outer bag.

The second fact is that McEachen teaches the bag is "*sealable* after filling by *choking, heat sealing etc*" and is "sealed after filling and is easily openable at *the other end* by the user" (i.e. at the perforated side). Although McEachen teaches the bag is *openable* at both ends, McEachen does teach the filling (i.e. non-perforated) end is heat-sealed. Morris, the primary reference, teaches a perforated end enables access to an otherwise *heat-sealed* package, and thus places the perforated end closest to *the one* open end of an outer bag. Therefore, the teachings of McEachen would *not* require two open ends in the outer bag of Morris (or make the perforated end

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superfluous) since McEachen teaches a bread-containing package with one end having perforations and one end having a *heat seal* and the method and product of Morris require placing a heat-sealed inner package with a perforated end in an outer bag such that the perforated end is closest to *the* open end of the outer bag to enable access.


With respect to shrink wrapping the bread loaf of Morris, Theed provides motivation for shrink-wrapping packages in contact with bread loaves. Shrink-wrapping kills bacteria on the surface of the bread and protects the bread during storage. Thus, one would be motivated to combine this feature since it is desirable to have minimal microbial problems with the bread.


### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
October 17, 2002

  
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